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## PART-I

### Notifications, Orders and Declarations by Haryana Government

#### HARYANA GOVERNMENT

#### INDUSTRIES & COMMERCE DEPARTMENT

#### Notification

The 18th November, 2020

No. 02/08/2020-4IB-II.—

**Subject: Haryana State Public Procurement (Preference to Make in India) -2020**

**Whereas**, the Govt. of India vide its Order No. P-45021/2/2017-B.E.-II dated 15.06.2017 and as amended from time to time had notified, 'Public Procurement (Preference to Make in India), Order 2017" with the objective to focus on job creation & skill enhancement in the required sector of the economy, high quality standards and minimizing the impact on the environment and to attract capital & technological investment in the country, and

**Whereas**, the State Government agree to the policy of the Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, and

**Whereas**, the procurement by the State Government is substantial in amount and can contribute towards this policy objective, and

**Whereas**, the local content can be increased through partnerships, cooperation with local companies, establishing production units in India or Joint Ventures (JV) with Indian suppliers, increasing the participation of local employees in services and training them.

The matter has been considered by the State Government and it has been decided to "Make in India" concept as part of Public Procurement in the State. Accordingly, the Public Procurement in the State will be governed by this Order as under:-

#### 1. Definitions: For the purposes of this Order:

**'Local content'** means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Department, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

**'Class-I local supplier'** means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 50%, as defined under this Order.

**'Class-II local supplier'** means a supplier or service provider, whose goods, services or works offered for procurement, has local content more than 20% but less than 50%, as defined under this Order.

**'Non - Local supplier'** means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than or equal to 20%, as defined under this Order.

**'L1'** means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

**'Finally determined L1'** means the finally determined lowest price after following the negotiation policy of the State (wherever applicable).

**'Margin of purchase preference'** means the maximum extent to which the price quoted by a 'Class-I local supplier' may be above the L1 for the purpose of purchase preference.

**'Nodal Department'** means the Department identified pursuant to this order in respect of a particular item of goods or services or works.

**'Procuring entity'** means a department or attached or subordinate office of, or autonomous body controlled by, the Government of Haryana and includes Government companies as defined in the Companies Act.

**'Works'** means – (1) **Original works** means all new constructions, site preparation, additions and alterations to existing works, special repairs to newly purchased or previously abandoned buildings or structures, including remodeling or replacement. (2) **Minor works** mean works which add capital value to existing assets but do not create new assets. (3) **Repair works** means works undertaken to maintain building and fixtures. Works will also include services or goods incidental or consequential to the original or repair works. It will also include 'turnkey works'

2. **Margin of Purchase Preference:** The margin of purchase preference shall be 15 %.

3. **Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement**

- (a) In procurement of all goods, services or works in respect of which the Nodal Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', as defined under the Order, shall be eligible to bid irrespective of purchase value.
- (b) In procurement of all goods, services or works, not covered by sub-para 3(a) above, and with estimated value of purchases less than Rs. 200 Crore, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Industries & Commerce Department. Only 'Class-I local supplier' and 'Class-II local supplier', as defined under the Order, shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'.
- (c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

3A. **Requirement of Purchase Preference:**

- a. Subject to the provisions of this Order and to any other specific instructions issued by the Nodal Departments or in pursuance of this Order, purchase preference shall be given to Class-I local supplier' in procurements undertaken by procuring entities in the manner specified hereunder
- b. In the procurements of Goods or Works which are covered by paragraph 3(b) above and which are divisible in nature, the, the 'Class-I Local Supplier' shall get purchase preference over 'Class-II Local Supplier' as well as 'Non-Local Suppliers', as per the following procedure:
  - i. Among all qualified bids, the lowest bid will be termed as L1 (Wherever applicable, the finally arrived L1 shall be obtained in case the procurement is within the scope of negotiation policy of the State). If L1 (wherever applicable, the finally arrived L1) is from a 'Class-I local supplier', the contract for full quantity will be awarded to L1.
  - ii. If L1 Bid (wherever applicable, the finally arrived L1) is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price for the remaining 50% quantity subject to the Class-I local supplier's' quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on 'Class-I local supplier', then such balance quantity may also be ordered on the L1 bidder.

- c. In procurements of Goods or Works not covered by sub-paragraph 3(b) above and which are not divisible, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-Local Suppliers', as per the following procedure:-
- Among all qualified bids, the lowest bid will be termed as L1 (Wherever applicable, the finally arrived L1 shall be obtained in case the procurement is within the scope of negotiation policy of the State). If L1 (Wherever applicable, the finally arrived L1) is 'Class-I local supplier', the contract will be awarded to L1.
  - If L1 (Wherever applicable, the finally arrived L1) is not from a 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
  - In case such lowest eligible 'Class-I local supplier' fails to match the L1 price (Wherever applicable, the finally arrived L1 price), the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, then the contract may be awarded to the L1 bidder.
- d. "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.
4. **Exemption of small purchases:** Notwithstanding anything contained in paragraph 3, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.
5. **Minimum local content:** The local content requirement to categorize a supplier as 'Class-I local supplier'/'Class-II local supplier'/'Non local supplier' shall be as defined in the Para "2" of the Order. No change is permissible on this account. However, if any Nodal Department finds that for any particular item, pertaining to their Nodal Department, the definition of Local Content, as defined in the order, is not workable/has limitations, it may notify alternate suitable mechanism for calculation of local content for that particular item.
6. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
7. **Government E-marketplace:** In respect of procurement through the Government E- marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
8. **Verification of local content:**
- The 'Class-I local supplier'/'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the minimum local content requirement for 'Class-I local supplier'/'Class-II local supplier', as the case may be. They shall give details of the location(s) at which the local value addition is made.
  - In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
  - Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
  - Nodal Departments may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
  - Nodal Departments and procuring entities may prescribe fees for such complaints.

- f. False declarations, malpractices, bribery, fraud, misrepresentation, un-business like dealings, etc will be breach of the Code of Integrity under Chapter-14 - 'Penal Action' of Manual of Officer Procedure for Supplies & Disposals of Stores -1985 along with such other actions as may be permissible under law.
  - g. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph 9 (h) below.
  - h. The Supplies & Disposals Department shall issue suitable instructions for the effective and smooth operation of this process, so that:
    - i. The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Supplies & Disposals through the concerned Department or in some other manner,
    - ii. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
    - iii. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.
9. **Specifications in Tenders and other procurement solicitations:**
- a. Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
  - b. Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
  - c. Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.
  - d. If a Nodal Department is satisfied that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, it may, if it deems appropriate, restrict or exclude bidders from that country from eligibility for procurement of that item and/ or other items relating to that Nodal Department. A copy of every instruction or decision taken in this regard shall be sent to the Chairman of the Standing Committee.
  - e. For the purpose of sub-paragraph 9 (d) above, a supplier or bidder shall be considered to be from a country if (i) the entity is incorporated in that country, or ii) a majority of its shareholding or effective control of the entity is exercised from that country; or (iii) more than 50% of the value of the item being supplied has been added in that country. Indian suppliers shall mean those entities which meet any of these tests with respect to India."
- 9A. **Action for non-compliance of the Provisions of the Order:** In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.
10. **Assessment of supply base by Nodal Departments:** The Nodal Department shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.
11. **Increase in minimum local content:** The Nodal Department may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.
12. **Manufacture under license/ technology collaboration agreements with phased indigenization:** While notifying the minimum local content, Nodal Departments may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.

- 13. Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,
- reduce the minimum local content below the prescribed level; or
  - reduce the margin of purchase preference below 15%; or
  - exempt any particular item or supplying entities or class or classes of items or procuring or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be provided to the Standing Committee and concerned Nodal Department. The Nodal Department concerned will continue to have the power to vary its notification on Minimum Local Content.

- 14. Directions to Govt. Boards/Corporations/Universities/Societies/Companies etc:** In respect of such entity and other procuring entities not governed by the PFR, the Administrative Department shall issue policy directions requiring compliance with this Order.
- 15. Standing Committee:** A standing committee is hereby constituted with the following membership :

| Sr. No. | Designation in the State Government  | Designation in the Standing Committee |
|---------|--|---------------------------------------|
| 1       | Administrative Secretary to Government Haryana, Industries & Commerce Department                                       | Chairman                              |
| 2       | Administrative Secretary to Government Haryana, Electronics & IT Department  | Member                                |
| 3       | Administrative Secretary of the Department concerned with a particular item in respect of issues relating to such item | Member                                |
| 4       | Director, Industries & Commerce Department   | Member                                |
| 5       | Director, Supplies & Disposals Department  | Member - Convener                     |

The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

- 16. Functions of the Standing Committee:** The Standing Committee shall meet as often as necessary, but not less than once in six months. The Committee
- shall oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Departments and procuring entities.
  - shall annually assess and periodically monitor compliance with this Order
  - shall identify Nodal Departments and the allocation of items among them for issue of notifications on minimum local content
  - may require furnishing of details or returns regarding compliance with this Order and related matters
  - may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures
  - may examine cases covered by paragraph 13 above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization
  - may consider any other issue relating to this Order which may arise.
- 17. Removal of difficulties:** Nodal Departments and CEOs/MDs/BODs of Government entities may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of this Order.

18. The Nodal Department and the allocation of items among them for issue of notification on minimum local content are as contained in **Annexure-I** of this order.
19. The purchase preference as provided to MSMEs in 'Haryana State Public Procurement Policy for MSMEs 2016' and Startups of the State as contained in 'Concessions/benefits in Public Procurement to Startups/First generation Entrepreneurs in the State' will be applicable subject to their fulfillment of criteria of 'Class-I Local Supplier' & Class-I Local Supplier'.
21. **Transitional provision:** This Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.

The above instructions may be brought to the notice of all concerned.

Dated: 27.10.2020

APOORVA KUMAR SINGH,  
Principal Secretary to Government Haryana,  
Industries & Commerce Department.

**Annexure-I**

As per Provision under Para-18 of this policy, the following Departments will act as Nodal Department for issue of notification on minimum local content:-

| Sr. No.   | Name of the Nodal Department                       | Items for notification of minimum local contents  |
|---|--|---|
| 1   | Transport Department                               | Vehicles (except specific Department related store), Buses, Components/material required for fabrication and maintenance of busses, Oil & lubricants, Tyres & Tubes, Batteries, Tyre Retreading Material    |
| 2   | PWD (B&R)  | All type of Cement, DG Sets, Road Rollers, Furniture (except for Dual Desk and Computer Furniture), Air Conditioners, Fans, Air/Water Coolers and other items required in electrical fittings in buildings. |
| 3   | PHED   | Pipes and other items required for drinking water supply, Bleaching Powder and other water purifying items, Manhole Covers & Frames, Sewer Cleaning Machines  |
| 4   | Food & Supply Department                           | Polythene Covers, Tarpaulins, Cross Laminated Covers, Deltametherine, Aluminium Phosphite, Mesh Nets, Crates (Wooden/Plastic)   |
| 5   | Health Department                                  | All Medicine and Medical Equipments   |
| 6   | Power Department                                   | Transformers, ACSR Conductors, Cables, Poles, Meters and all other Electrical Generation, Transmission, Distribution related items  |
| 7   | School Education Department                        | Dual Desk, Chairs & Table required for educational purpose, Bicycle, Sewing Machine   |
| 8   | E&IT Department                                    | Computers, Laptops, UPS, Printers, other IT related items & Consumable and Computer Furniture   |
| 9   | Printing & Stationery Department                   | Printing Job, Paper and Stationery Supplies   |
| 10  | New and Renewable Energy Department                | Solar Energy based Equipments/Systems   |
| 11  | Skill Development & Industrial Training Department | Items/ Equipments/ Chemicals related to laboratories/ workshops in Schools and ITIs of the State.   |
| 12  | Technical Education Department                     | Items/ Equipments/ Chemicals related to laboratories/workshops in Polytechnics of the State.  |
| 13  | Animal Husbandry & Dairying Department             | All medicines related to Animal Husbandry   |
| Note: Any other Item(s) not covered above, the consuming Department will act as Nodal Department. |  |   |